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Maria Aurora Fe Candelaria

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THE ANGKOR SITES OF CAMBODIA: THE CONFLICTING VALUES OF SUSTAINABLE TOURISM AND STATE SOVEREIGNTY

I. INTRODUCTION

The Angkor civilization is recognized among the major world civilizations, equaling those that gave birth to the pyramids in Egypt, the temples of India and the pagodas of China.¹ The Angkor sites² are not as well known as any of these monuments, which is unsurprising given the political turmoil that had isolated Cambodia in the last few centuries.³ The vision of lost temples slowly and irreversibly being engulfed by rampant tropical vegetation has spurred the international community into action—in 1992, the Angkor sites were provisionally inscribed into the United Nations Educational, Scientific and Cultural Organization's (UNESCO) World Heritage Sites as well as in the List of World Heritage in Danger.⁴

More than ten years later, the World Heritage Committee (WHC) applauded the efforts of Cambodia and the international community in the conservation, protection and management of the Angkor sites, hailing it a

1. Azedine Beschouch, *Exceptional Measures for a Site of Exceptional Value*, 54 MUSEUM INT'L 104, 104 (2002).

2. For the purposes of this Note, the Angkor sites refer to the archaeological sites of Angkor, Roluos and Bantay Srei. Collectively, they comprise ancient Hindu and Buddhist-inspired temples and monuments built in northwestern Cambodia from 900 AD to 1200 AD. For further description of these sites, see *infra*, Part II.A.

3. Cambodia's contentious political history included ongoing border wars with the Thais and Chams (Vietnamese) for two centuries. Internal power struggles between different local political groups in 1945 led to the ascendancy of the Khmer Rouge in the 1970s. The notorious Khmer Rouge regime, as well as the post-war occupation by Vietnam, ensured that Cambodia was closed off to most foreigners until the mid-1990s. For a more comprehensive background of Cambodia's political history, see *infra* Part II.A.

4. U.N. Educ., Scientific & Cultural Org. [UNESCO], World Heritage Committee, *Report of the Sixteenth Session, Santa Fe, 1992*, WHC-92/CONF.002/12 (Dec. 14, 1992). World Heritage Site designation is an international mechanism through which UNESCO, via the World Heritage Committee, aims to promote the identification, study and protection of natural and cultural property of international significance. Famous cultural sites within the list include the Great Wall of China, the pyramids of Giza in Egypt and Taj Mahal in India. Presently, there are 812 properties on the list. UNESCO World Heritage Center, *World Heritage List* (2005), <http://whc.unesco.org/pg.cfm?cid=31> (last visited Aug. 29, 2005). The World Heritage in Danger sites, as the name suggests, are granted priority attention due to the more imminent threats to cultural and natural property. See *infra* notes 55–58 and accompanying text.

success.⁵ Recently, in 2004, the Angkor sites were finally removed from the endangered heritage list.⁶

However, work still remains to be done. It is estimated that at least twenty five more years are needed to complete the restoration work at the Angkor sites.⁷ In the meantime, the WHC has identified several target areas for the Cambodian government to address: developing plans for sustainable tourism,⁸ employing government initiatives to decrease poverty, and appealing to other countries to address the widespread looting and smuggling of artifacts from other Cambodian sites.⁹

The initiative of sustainable tourism is a laudable goal, but some critics find the initiative unrealistic when applied to very impoverished countries.¹⁰ In Cambodia's case, local authorities see mass tourism as a way of jumpstarting the flagging economy, which conflicts with sustainable tourism's ideal of high-quality "cultural" tourism in controlled numbers. Moreover, disagreement has arisen on how to best develop the sites, with the international community seeking minimal development within the critical archaeological areas, while others see greater development as the

5. The Angkor conservation efforts were deemed effective in halting the imminent destructive threats facing the Angkor structures. Its participants included mostly international archaeological teams and non-governmental organizations which were later invited to document their conservation methodologies for application in other endangered World Heritage sites such as in Afghanistan and Iraq. UNESCO, *Paris Declaration, Safeguarding the Development of Angkor* [hereinafter *Paris Declaration*] (adopted Nov. 15, 2003), <http://portal.unesco.org> (type in Paris Declaration, Safeguarding the Development of Angkor) (last visited Aug. 29, 2005).

6. UNESCO, *Angkor Among the Three Properties Removed from UNESCO's List of World Heritage in Danger*, July 4, 2004, <http://whc.unesco.org/en/news/70> (last visited Aug. 29, 2005) [hereinafter UNESCO, *Angkor Among the Three Properties*].

7. Alan Riding, *After the Nightmare, Saving Cambodia's Treasures*, N.Y. TIMES, Feb. 3, 2004, at E1.

8. The concept of sustainable tourism has its roots in the idea that cultural heritage is a nonrenewable resource that can be depleted if not managed wisely. One definition describes sustainable tourism as comprising several key elements: (1) maintaining the current resource base for future generations, (2) maintaining the productivity of the resource base, (3) maintaining biodiversity and avoiding irreversible environmental damage, and (4) ensuring equity both within and between generations. Tony Griffin & Nicolette Boele, *Alternative Paths to Sustainable Tourism: Problems, Prospects, Panaceas and Pipe-dreams*, in TOURISM AND ECONOMIC DEVELOPMENT IN ASIA & AUSTRALIA 322–23 (Frank M. Go & Carson L. Jenkins eds., 1997).

9. *Paris Declaration*, *supra* note 5.

10. See generally Lindsay French, *Hierarchies of Value at Angkor Wat*, 64 ETHNOS (France) 170 (1999) (arguing that the extreme hardship and poverty characterizing the local Cambodian economy distorts traditional value systems such that the Angkor sites remain vulnerable to conflicting value systems, including: conservation and exploitation, scholarship and commerce, and preservation and development).

key to the creation of jobs and business opportunities. This Note will explore the difficulties in applying an international treaty to a domestic scenario when the international community's ideal of protection and preservation may not exactly mesh with the host state's vision of developing a World Heritage Site. In addressing this issue, the author advocates for greater deference to the host country's sovereignty in the management of its cultural heritage.

Part II provides an overview of the civilization behind the Angkor sites and its context within the current economic and political climate of Cambodia. Part III describes the World Heritage Convention (Convention) and the cooperative effort between Cambodia and the international community in restoring and maintaining the Angkor sites. Part IV highlights the conflicting values of state sovereignty and world heritage protection. In particular, the Note utilizes the cultural nationalism/cultural internationalism dichotomy¹¹ in analyzing these tensions. In Part V, the Note takes a closer look at one of the consequences of successful preservation efforts, which is the rise in tourism and the hazards that it brings. It also provides a description of the tourism policies advocated by the WHC and the international community. A discussion of the pros and cons of sustainable tourism follows. Finally, in Part VI, the Note considers the impracticability of applying sustainable tourism concepts in situations where they conflict with the needs and expectations of the state's people. The author offers the prescription that for the management of World Heritage properties, the requirement of sustainable tourism should be flexibly applied such that the state sovereign retains the ultimate decision-making authority while the local community enjoys active participation in the decision-making process.

II. CAMBODIA: PAST AND PRESENT

A. The Khmer Legacy

The earliest evidence of human settlement in Cambodia is estimated to date back six thousand years.¹² The rise of the Khmer Empire started in ninth century AD when Jayavarman II, the leader of the Khmer people, united the two states that make up modern-day Cambodia.¹³ At its peak,

11. For a definition of these terms, see *infra* Part IV.A–B.

12. DAWN ROONEY, ANGKOR: AN INTRODUCTION TO THE TEMPLES 20 (Odyssey 2d ed. 1997) (1994).

13. ROONEY, *supra* note 12, at 20.

the Khmer kingdom stretched from Burma (now Myanmar) to Indochina (now Vietnam) and from parts of China to Malaysia.¹⁴

The Khmers displayed a sophisticated understanding of hydrology and architecture and were able to harness the abundant tropical rainfall for their agricultural needs.¹⁵ Indravarman I built the first city complex at the pre-Angkorian capital of Hariharalaya, now known as Roluos.¹⁶ Successive rulers followed Indravarman I's practice and constructed increasingly larger and more elaborate city complexes, palaces and temples at Angkor until 1200 AD.¹⁷ After five centuries of prosperity, the Khmer Empire fell into decline.¹⁸ Once abandoned by the Khmers, Angkor was never to retain its earlier glory.¹⁹

14. William Chapman, "The Best-Laid Schemes . . .": *Land-Use Planning and Historic Preservation in Cambodia*, 7 PAC. RIM L. & POL'Y J. 529, 535 (1998).

15. Water played a major role in the daily lives of the ancient Khmers and directly contributed to the growth of the Khmer empire. A complex system of artificial lakes, pools, canals and reservoirs (*barays*) were integral elements of their city complexes, serving both as means of transportation and as storage facilities for irrigation. Successful water management allowed the Khmers to prosper, as they were able to harvest rice several times a year when other societies at the time had a single growing season per year. *Id.* at 536–37. Water also played a major role in traditional Khmer religion. According to Khmer mythology, the Khmers are descendants of an Indian god who was exiled to Cambodia and later married a *nagini*, or water-princess. The king of the *nagas*, or water-gods, drank the waters that covered the land and gave the country to the newlywed couple and named it Kambuja. ROONEY, *supra* note 12, at 22.

16. The layout of the Khmer city complexes followed a similar pattern. The middle of the compound contained the state temple. A wooden palace and defensive moat were also common features. Leading dignitaries also constructed temples dedicated to Hindu divinities both within and outside the compound. ICOMOS, *Nomination of the Archaeological Parks of Angkor, Roluos, and Bantay Srei to the World Heritage List*, dated Sept. 22, 1992, at 1, available at http://whc.unesco.org/archive/advisory_body_evaluation/668.pdf (last visited Aug. 30, 2005). Mahayana Buddhism and Hinduism, the predominant religions at the time, influenced the Khmer practice of building temples that signify the king's power as a direct descendant of the gods. Thus, the larger the city complex was built, the greater the king's power was believed to be. ROONEY, *supra* note 12, at 84.

17. For a more detailed view of the Angkor period, see ROONEY, *supra* note 12, at 24–32.

18. Historians have advanced different theories to explain the fall of the Khmer Empire. One is that the encroaching Thai army from the north repeatedly raided Angkor and necessitated the retreat of the capital to the south of Cambodia (Phnom Phen). Another is that the water system, already affected by droughts, was neglected because of constant wars with the Thais and eventually contributed to the collapse of Khmer agriculture. There was also a shift away from Mahayana Buddhism and towards Theravada Buddhism, which de-emphasized the royalty-divinity connection along with the practice of unrestrained temple building. Finally, there is also evidence that the Khmers revolted against the unrestrained erection of temples and monuments, which drained the king-

The legacy of temple- and palace-building of the Khmer monarchy has produced a rich collection of historical monuments scattered over north-western Cambodia.²⁰ The Angkor sites are acknowledged as the largest archaeological working site in the world, with the protected area covering four hundred square kilometers, including forested area.²¹ Angkor Wat, the largest temple, is part of a religious structure that is roughly three times the size of Manhattan.²² Angkor Wat was started in the twelfth century and took thirty-seven years to complete.²³ Millions of tons of sandstone were quarried from mines twenty-five miles from the site to build a structure that is described both as the largest stone monument in the world, as well as the largest religious building in the world.²⁴ This temple complex is best known for its intricate bas-relief carvings that vividly portray the epic Indian poems of the Mahabharata and the Ramayana.²⁵ The other major sites are equally unique, with the Hindu-inspired Rolous group of temples demonstrating the beginnings of the classic period of Khmer art, and Bantay Srei displaying the finest example of Indian tapestry-style carvings.²⁶

dom's treasury. LAWRENCE PALMER BRIGGS, *THE ANCIENT KHMER EMPIRE* 257–60 (1951).

19. Once the capital had shifted to Phnom Phen, Angkor and its temples became shrouded in the dense tropical jungles and relegated to mythology. It was not until several centuries later that it was “rediscovered” as evidence of a lost civilization. *See infra* notes 31–33 and accompanying text.

20. A report by the Cambodian security in charge of guarding Angkor sites places the figure at 273 temples, with thirty-seven main sanctuaries. Denis D. Gray, *Heritage Police Face Huge Task in Cambodia*, ROCKY MOUNTAIN NEWS, Apr. 27, 1997, at 56A. This figure is likely much higher as archaeological sites continue to be discovered. *See* James Wiseman, *Wonders of Radar Imagery*, ARCHAEOLOGY, Sept.–Oct. 1996, at 14–15; Matthew Chance, *Satellite Images Reveal the Lost Temples of Angkor*, INDEPENDENT (London), Aug. 18, 1997, at 10; Nick Cumming-Bruce, *NASA Maps Reveal Ancient Temples in Cambodian Forest*, GUARDIAN (London), Feb. 14, 1998, at 16.

21. Anne Leimaistre & Sébastien Cavalier, *Analyses and Management Prospects of the International Angkor Programme*, 54 MUSEUM INT'L 117, 125 (2002); UNESCO, BRIEF DESCRIPTIONS OF THE 754 PROPERTIES INSCRIBED ON THE WORLD HERITAGE LIST, 2003, at 10 (2003), available at <http://unesdoc.unesco.org/images/0013/001332/133247e.pdf> (last visited Aug. 30, 2005).

22. John W. Monroe, *Angkor Wat: A Case Study in the Legal Problems of International Cultural Resource Management*, 24 J. ARTS MGMT. L. & SOC'Y 277, 277 (1995).

23. Russell Ciochon & Jamie James, *The Glory that was Angkor*, ARCHAEOLOGY, Mar.–Apr. 1994, at 38, 40.

24. *Id.* at 40.

25. The Mahabharata and the Ramayana are stories of celestial battles between Hindu gods and demons and include the Hindu concepts of creation, death and reincarnation as common themes. ROONEY, *supra* note 12, at 138–46.

26. *Id.* at 192–96, 240–42.

Despite the abandonment of Angkor by the Khmers, Buddhist monks maintained some of its temples.²⁷ Their efforts, however, were insufficient to keep the sites from falling into disrepair and obscurity. Deterioration from natural causes affected all of the wooden structures, which have long since rotted away.²⁸ Stone structures as well were vulnerable to aging.²⁹ Furthermore, the robust tropical vegetation was an omnipresent threat, particularly the invasive ficus trees that rooted and grew through the seams and cracks of the sandstone blocks.³⁰

In the 1850s, Henri Mouhot, a French explorer, "rediscovered" the lost city of Angkor and triggered excitement in the European imagination.³¹ Later expeditions by other groups uncovered further sites, with the French undertaking to further study these wondrous creations.³² Realizing the significance of the Angkor sites, France established École Française d'Extrême-Orient (EFO) in 1898 to study and restore the monu-

27. *Id.* at 32.

28. See Jonathan Wager, *Environmental Planning for a World Heritage Site: Case Study of Angkor, Cambodia*, 38 J. ENVTL. PLAN. & MGMT. 419, 421 (1995).

29. The temples were naturally subject to weathering conditions that lead to "contour scaling," or the surface peeling of stone, which is very destructive to the temples' bas-relief carvings. Several factors contribute to contour scaling. First, moisture and temperature fluctuations cause internal shear forces that lead to decay. Second, the contamination of the carvings with soluble salts from bat droppings produces harmful mechanical stresses to stone. Finally, microbiological activity also contributes to the damaging effects on stone. Hans Leisen, *Contour Scaling: The Disfiguring Disease of Angkor Wat Reliefs*, 54 MUSEUM INT'L 85, 87-91 (2002).

30. At some temples, the trees and the stone structures were so intertwined that restorers could not determine whether the structures were holding the trees in place, or if the trees were keeping the structures together. Leaving the trees in place ensures that some of the structures would eventually collapse, either by the trees forcing the stones apart, by falling on fragile structures, or by swaying in the wind and weakening the buildings. However, removing the trees also risked the temples collapsing. Seth Mydans, *Cambodia's Temple-Embracing Trees are both Friend and Foe*, SEATTLE TIMES, Aug. 19, 2001, at A8 [hereinafter Mydans, *Cambodia's Temple-Embracing Trees*].

31. Other foreigners, hearing of the fabled city of Angkor in their travels, journeyed to Cambodia from as early as the sixteenth century, although their writings have received little attention. It was not until after Mouhot's death, when his letters and detailed sketches of Angkor were presented to the Royal Geographical Society of France in 1862 that Angkor started to gain great international interest. BRUNO DAGENS, *ANGKOR: HEART OF AN ASIAN EMPIRE* 22-42 (trans. Harry N. Abrams Inc. 1995); see also French, *supra* note 10, at 174.

32. The French academic interest in the protection of the sites was not entirely munificent. Some scholars possessed colonial ideals of acquisition, i.e., that exemplary works of art should be "rescued" from their birthplaces of neglect and placed in museums for protection and academic study alongside other outstanding pieces of art from other places and eras. French, *supra* note 10, at 175.

ments.³³ Work commenced in the early 1900s and came to a complete standstill during the Khmer Rouge regime in 1972.³⁴

The Khmer Rouge imposed an extreme version of Stalinist Communism and caused total upheaval of Cambodian society.³⁵ Although some reports have indicated that the looting of Angkor accelerated during this time, experts have disputed this.³⁶ The Khmer Rouge had indeed destroyed some statues but in general had left the monuments alone.³⁷ It has been said that the greatest harm to Angkor during this time was the murder of all the Cambodian archaeological experts and the permanent loss of historical knowledge that should have been passed down to the next generation.³⁸

In 1978, neighboring Vietnam invaded Cambodia, ending the Khmer Rouge atrocities but igniting a civil war that lasted almost thirteen years.³⁹ Vietnam withdrew from Cambodia in 1989 under pressure from

33. *Id.* at 176. Internecine warfare between Cambodia and Vietnam from the seventeenth to the nineteenth centuries greatly weakened Cambodia; in 1863 King Norodom asked for French protection against Vietnam's claim to Cambodian territories. Cambodia thereafter became a de facto colony (although it was termed as a protectorate) of France until 1954. HENRY KAMM, *CAMBODIA: REPORT FROM A STRICKEN LAND* 23–28 (1998).

34. ROONEY, *supra* note 12, at 38–39.

35. ELIZABETH BECKER, *WHEN THE WAR WAS OVER: THE VOICES OF CAMBODIA'S REVOLUTION AND ITS PEOPLE* 200–01 (1986). The Khmer Rouge completely abolished the Cambodian monarchy system, the practice of Buddhism, the education system, private property ownership, and even family ties. All Cambodians were classified as “workers, peasants, or soldiers” whose duties were to work and defend the country. *Id.* at 218, 223. Massive relocations from the cities to the countryside were implemented. BEN KIERNAN, *THE POL POT REGIME: RACE, POWER AND GENOCIDE IN CAMBODIA UNDER THE KHMER ROUGE, 1975–79*, at 55–64 (1996). The skilled and educated stratum of the Cambodian population was systematically tortured and executed. KAMM, *supra* note 33, at 173. *See also* French, *supra* note 10, at 179. It is estimated that 1.5 million Cambodians, or one-fifth of the population, perished during this period due to genocide, starvation and disease. KIERNAN, *supra*, at 457.

36. Étienne Clement, *The Looting of Angkor: Keeping Up the Pressure*, 54 MUSEUM INT'L 138, 138 (2002).

37. *Id.* at 139. The Khmer Rouge revolution was an attempt to free Cambodia from all Western influences and to embrace Khmer culture. As the Angkor monuments represented a pinnacle of Khmer achievement, they were deliberately left alone. French, *supra* note 10, at 179. Additionally, the Khmer mining throughout the region also heavily discouraged looting. Seth Mydans, *On the Verge: The Overwhelming of Angkor*, N.Y. TIMES, SOPHISTICATED TRAVELER MAG., Mar. 4, 2001, at 26 [hereinafter Mydans, *On the Verge*].

38. After the fall of the Khmer Rouge, almost every Cambodian who had worked in the restoration of the temples had either been killed during the Khmer Rouge regime, or had already fled the country to avoid persecution. French, *supra* note 10, at 181.

39. CIA, *The World Factbook: Cambodia*, <http://www.cia.gov/cia/publications/factbook/geos/cb.html> (last visited Aug. 30, 2005).

the United Nations (UN) and Vietnam's Soviet supporters.⁴⁰ The Archaeological Society of India (ASI) was the first archaeological group to return to Cambodia to resume restoration work in 1986.⁴¹ Increased attention to preservation of the Angkor monuments was led by UNESCO through the inscription of Angkor on the World Heritage List, discussed later in Part III.

B. Modern Cambodia

The consequences of the Khmer Rouge's systematic eradication of the academic and professional segments of its society still reverberate today. Cambodian human capital has been severely decimated, as evidenced by the low levels of education and extreme poverty that characterize the local economic landscape.⁴² Per capita income of Cambodians is \$280 per annum.⁴³ Agriculture employs 75 percent of the labor force and 36 percent of the population is below the poverty line.⁴⁴ Roughly 60 percent of the population is twenty years old or younger and most are expected to swell the workforce in the next ten years.⁴⁵

With its abundant and cheap labor supply, Cambodia should be an attractive country for foreign investment. However, international investors continue to be wary of the economy due to a "dysfunctional legal system coupled with government corruption."⁴⁶ Cambodia is also heavily reliant on international aid: in 2002, it received about \$500 million from international donors, which made up 75 percent of government expenditures.⁴⁷

40. KAMM, *supra* note 33, at xxi.

41. Ciochon & James, *supra* note 23, at 42 ("India was the first non-Communist country to recognize the government installed by Vietnam, and the invitation to [restore the monuments] was politically motivated."). India adopted Angkor Wat as its pet project for conservation and contributed both funds and technical expertise. Restoration materials and equipment, not available in Cambodia at the time, were shipped from India. ASI also had to deal with training unskilled workers, the rampant inflation of the local currency, as well as being under fire from remaining Khmer Rouge troops. In spite of these challenges, ASI was able to complete their project ahead of schedule, in 1993. B. NARASIMHAIAH, *ANGKOR VAT: INDIA'S CONTRIBUTION IN CONSERVATION, 1986-1993*, at 82-84 (1994).

42. CIA, *supra* note 39.

43. Seth Mydans, *Cambodia's New King Dances Into a Land of the Absurd*, N.Y. TIMES, Oct. 23, 2004, at A9 [hereinafter Mydans, *Cambodia's New King*].

44. CIA, *supra* note 39.

45. *Id.*

46. A World Bank survey of Cambodian residents showed that four-fifths of the public sector believed that bribes were part of the economy, and 71 percent of large firms made frequent payments. Mydans, *Cambodia's New King*, *supra* note 43, at A9.

47. CIA, *supra* note 39.

Tourism plays a major role in Cambodia's economy, providing up to one-third of its foreign currency.⁴⁸ From being virtually isolated from foreigners during the latter half of the twentieth century, in 2000, foreign tourist arrivals reached 466,365 and were estimated to have surpassed one million visits in 2003.⁴⁹ Domestic tourism by local Cambodians adds another 200,000 to 400,000 visits.⁵⁰ Tourism has created a population influx in the nearby town of Siem Reap, eight kilometers away from Angkor; it is expected that by 2005 the population would have reached as high as 177,000, up from 41,000 inhabitants in 1992.⁵¹ Conservationists fear that these increases would have detrimental effects on the protected sites and possibly even undo some of what has been accomplished.⁵² Besides the impact on the preservation efforts, some perceive the population and tourism boom to place a great strain on the natural resources available.⁵³

General sentiment from scholars, visitors and conservationists alike reflect growing dismay that Angkor will soon become commercialized and overexploited.⁵⁴ Consequently, they invoke Cambodia's responsibilities under the World Heritage Convention to address these difficulties.

48. Darryl D'Monte, *Monumental Shame*, HINDUSTAN TIMES (India), Oct. 18, 2004, http://www.hindustantimes.com/news/5922_1062647,00120001.htm (last visited Aug. 30, 2005).

49. Hervé Barré, *Cultural Tourism and Sustainable Development*, 54 MUSEUM INT'L 126, 126 (2002).

50. Stéphane Durand, *Angkor: A Decade of Tourist Development After a Decade of Heritage Rescue?*, 54 MUSEUM INT'L 131, 134 (2002).

51. Barré, *supra* note 49, at 128.

52. Among the threats posed by the rise in tourist visits include unregulated visiting of monuments, the build-up of traffic, increases in unauthorized and unsightly hawking of tourist souvenirs, and graffiti and trash left by tourists. Durand, *supra* note 50, at 132; Denis D. Gray, *Tourist Development Threatens Angkor; Fight is on to Protect Ancient Cambodian Treasure from Exploitation*, FRESNO BEE, Mar. 2, 1996, at C6 [hereinafter Gray, *Tourist Development*].

53. There is concern that the environment may not be able to meet the burgeoning population's needs. Agricultural yield from family farms remains too low for the rising demand. See Barré, *supra* note 49, at 129. Similarly, the population's reliance on fisheries and forest products may contribute to environmental degradation. Wager, *supra* note 28, at 423. UNESCO also estimates that a single tourist produces on average one kilogram of waste and consumes up to 200 liters of water a day. Anne Lemaistre & Sébastien Cavalier, *Analyses and Management Prospects of the International Angkor Program*, 54 MUSEUM INT'L 117, 124 (2002).

54. See, e.g., Gray, *Tourist Development*, *supra* note 52; John Gittings, *World Treasures in Peril: Temples at the Mercy of Raiders: The Second in our Series of World Heritage Sites Finds the Jewel of Cambodia Threatened by Troops, Tourists, and Poor Security*, GUARDIAN (London), Aug. 7, 2001, at 13.

III. THE WORLD HERITAGE CONVENTION

In response to the natural and manmade threats to cultural and natural heritage occurring throughout the world, UNESCO adopted the World Heritage Convention in 1972.⁵⁵ States that are parties to the Convention are responsible for identifying and protecting the cultural and natural heritage within their territories that fit the Convention's description.⁵⁶ The Convention also established the WHC to consider nominees for the World Heritage List.⁵⁷ The WHC is also responsible for identifying properties for the List of World Heritage in Danger.⁵⁸ To support its operations, the Convention requires membership dues, as well as international contributions of financial and technical support, to assist in the

55. UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, 27 U.S.T. 37, T.I.A.S. No. 8226 (World Heritage Convention), available at <http://unesdoc.unesco.org/images/0013/001333/133369e.pdf> (last visited Aug. 30, 2005). Cultural heritage falls into three categories:

monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

Id. art. 1. Natural heritage, on the other hand, are natural features of outstanding scientific or aesthetic value as well as biodiversity "hotspots" that shelter endangered species. *Id.* art. 2.

56. *Id.* art. 4.

57. The World Heritage List is a list of cultural and natural heritage with "outstanding universal value." *Id.* art. 11, paras.1-2.

58. The World Heritage in Danger List includes those properties that are:

threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides, volcanic eruptions; changes in water level, floods and tidal waves.

Id. art. 11, para. 4.

preservation of the sites within the World Heritage List.⁵⁹ Priority funding goes to endangered properties.⁶⁰ Inscription onto the World Heritage List also provides other benefits, such as increased global awareness of the site, as well as a means of obtaining additional aid from developed countries and non-governmental organizations.⁶¹

Cambodia ratified the Convention in 1991.⁶² In 1992, the International Council on Monuments and Sites (ICOMOS)⁶³ found that the Angkor sites satisfied the four criteria required for World Heritage inscription,⁶⁴ but recommended that final inscription be deferred due to the uncertain political climate of Cambodia, as well as the lack of any domestic cultural property laws.⁶⁵ The ICOMOS report detailed the many threats to the Angkor sites, including the instability of the subsoil beneath the tem-

59. *Id.* art. 15. The World Heritage Fund results from the membership dues of states that are party to the World Heritage Convention, which is in the form of one percent of their UNESCO contributions. About \$3 million is available yearly; the funds usually go to developing countries. Henry Cleere, *The Uneasy Bedfellows: Universality and Cultural Heritage*, in *DESTRUCTION AND CONSERVATION OF CULTURAL PROPERTY* 28 (Robert Layton et al. eds., 2001).

60. *Id.*

61. Cleere, *supra* note 59, at 28.

62. APSARA, *Legal Documents Concerning Angkor and the Region of Siam Reap: International Conventions*, http://www.autoriteapsara.org/en/apsara/about_apsara/legal_texts.html (last visited Aug. 30, 2005).

63. ICOMOS was founded in 1965 “in order to promote the doctrine and techniques of conservation. ICOMOS provides the World Heritage Committee with evaluations of cultural properties proposed for inscriptions on the World Heritage List, as well as with comparative studies, technical assistance, and reports on the state of conservation of inscribed parties.” UNESCO, *Who's Who*, <http://whc.unesco.org/whoswho.htm> (last visited Oct. 4, 2005).

64. These four criteria included:

- (a) [the site represented] a unique artistic achievement, a masterpiece of the human creative spirit;
- (b) [it has] exerted considerable influence during a given period, within a given cultural area, on the development of architecture, the monumental arts and spatial organization;
- (c) [it] left a singular vestige of a vanished civilization; and
- (d) [it constituted] an outstanding ensemble of a type of building or architecture that illustrates a significant historical period.

Beschaouch, *supra* note 1, at 106.

65. ICOMOS, *supra* note 16, at 4, 9. Cultural property laws include protective legislation on the discovery, ownership, and transfer of cultural property. *See id.* at 4.

ples,⁶⁶ "stone disease,"⁶⁷ vegetational growth,⁶⁸ instability of some of the structures,⁶⁹ improper restoration techniques,⁷⁰ and looting.⁷¹

Because of the extent of the dangers threatening the existence of the Angkor sites, the World Heritage Committee took the controversial step of granting Cambodia probationary inscription into the World Heritage List for a three-year period (1993–1995).⁷² Angkor's continued inscription after this period would then be contingent on Cambodia's (1) development of effective cultural property laws, (2) establishment of an adequately staffed protection agency, (3) delineation of permanent protected boundaries, (4) definition of meaningful buffer zones, and (5) centralization and coordination of ongoing conservation projects.⁷³ This impetus on Cambodia to take primary responsibility for the protection and management of the Angkor sites parallels the Convention's stance that host states retain ultimate sovereignty over world heritage properties.⁷⁴

66. The ancient irrigation system had fallen into disrepair and caused greater fluctuations of the water table, causing the sandy subsoil to shift in some areas. *Id.* at 5.

67. ICOMOS, *supra* note 16, at 6. *See also* Leisen, *supra* note 29 and accompanying text.

68. ICOMOS, *supra* note 16, at 6. *See* Mydans, *Cambodia's Temple-Embracing Trees*, *supra* note 30 and accompanying text.

69. Inadequate bonding of stone blocks contributed to cracking, which contributed to further "stone disease" and vegetational growth. ICOMOS, *supra* note 16, at 6.

70. The French conservation group EFEO used concrete to fill up gaps, which led to water seepage and further cracking. *Id.* It also used unsightly concrete pillars and rust-prone iron bands to support weakened structures. Meanwhile, the Indian conservation group ASI was criticized for using crude methods to clean structures, including vigorous scrubbing, which literally erased the details of some of the bas-reliefs. Ciochon & James, *supra* note 23, at 42, 46.

71. *See, e.g.,* Ciochon & James, *supra* note 23, at 49 (describing how looters have become more organized, using military equipment to blast through the Conservation d'Angkor, where artworks were held for safekeeping. More brazen looters even present pictures of in situ carvings that they offer to steal for their customers).

72. UNESCO World Heritage Committee, *supra* note 4, at 35–36. Besides meeting the criteria for cultural and natural heritage, a candidate for inscription onto the World Heritage List must meet certain procedural requirements, including a stable political system and the existence of cultural protection laws. ICOMOS, *supra* note 16, at 4. According to Azedine Beschaouch, the 2002 chairman and senior member of the WHC, there was international concern that inscription of a site that had not met these procedural requirements may set harmful precedent. *See* Beschaouch, *supra* note 1, at 107–08. This concern was likely justified, since the imposition of the responsibilities for restoring and protecting cultural property on a weakened or disinterested government may result in misallocation of scarce resources available for conservation that can go towards equally deserving properties in need of aid.

73. Beschaouch, *supra* note 1, at 108.

74. Article 4 of the World Heritage Convention provides:

In response, the Cambodian government established APSARA, an administrative agency responsible for the protection and management of Angkor and the region of Siem Reap.⁷⁵ The government also promulgated the Zoning and Environmental Management Plan for Angkor (ZEMP) recommendations by establishing protected areas and buffer zones.⁷⁶ The government also passed cultural property laws that vested ownership of discovered artifacts to the state, imposed inventory requirements on cultural property, and provided for restrictions on the excavation, movement and export of cultural artifacts.⁷⁷ In October 1993, the International Co-ordinating Committee for the Safeguarding and Development of the Historic Site of Angkor (ICC) was formed to monitor and coordinate international assistance relating to preservation and development of the Angkor sites.⁷⁸

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage . . . situated on its territory, *belongs primarily to that state*. It will do all it can to this end, to the utmost of its resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

World Heritage Convention, *supra* note 55, art. 4 (emphasis added).

75. Royal Decree Establishing a National Authority for the Protection and Management of Angkor and the Region of Siem Reap, Named APSARA, Feb. 19, 1995, *available at* http://www.autoriteapsara.org/en/apsara/about_apsara/legal_texts/decree1_text.html (last visited Aug. 30, 2005). The agency's name was taken from *apsaras*, which are celestial nymphs in dancing and flying poses found throughout the bas-relief carvings in the Angkor temples. ROONEY, *supra* note 12, at 104.

76. Royal Decree Establishing Protected Cultural Zones in the Siem Reap/Angkor Region and Guidelines for their Management, May 28, 1994, *available at* <http://www.autoriteapsara.org/eng-0-laws/2-zoning-texte.htm> (last visited Sept. 27, 2004). The protected areas are divided into five zones. Zone 1 includes monumental sites and is afforded the greatest level of protection. Zone 2 involves protected archaeological reserves, which are areas rich in archaeological remains that will act as buffer zones for Zone 1 sites and need protection from inappropriate development. Zone 3 covers protected cultural landscapes, which contribute to the cultural value or reflect traditional lifestyles and patterns of land use. Zone 4 encompasses sites of archaeological, anthropological or historic interest, which are areas that have some scientific interest but below the level of Zone 1 sites. Zone 5 areas contain the socio-economic and cultural development zone of the Siem Reap province, which includes the residential and commercial areas. *Id.* arts. 3–7. For a further description of the ZEMP study, see generally Wager, *supra* note 28.

77. Law on the Protection of Cultural Heritage, Jan. 25, 1996, *available at* http://www.autoriteapsara.org/en/apsara/about_apsara/legal_texts/decree4_text.html (last visited Aug. 30, 2005).

78. UNESCO, REPORT ON THE ACTIVITIES OF THE UNESCO OFFICE IN PHNOM PENH IN 2001 AND 2002, at 39 (2003) [hereinafter UNESCO, REPORT ON THE ACTIVITIES].

In 1996, the World Heritage Committee reviewed Cambodia's compliance with the World Heritage Site requirements and was very satisfied by Cambodia's efforts.⁷⁹ It lifted the Angkor sites' probationary status and eight years later, the Angkor sites were de-listed from the World Heritage in Danger List.⁸⁰ Since 1993, more than twenty different countries and private groups have contributed five million dollars to preservation efforts annually, and more than thirty international and non-governmental organizations have provided technical and research assistance.⁸¹ The WHC and inscription onto the World Heritage List, therefore, has had a successful application to the Angkor sites in terms of the conservation of its endangered structures. States who were parties complied with the terms of the treaty: Cambodia, through its development of legislative and executive infrastructure required to promote conservation efforts, and the other states and non-governmental organizations through their contributions of expertise, manpower, and financial contributions.

IV. THE COMPETING VALUES OF STATE SOVEREIGNTY AND WORLD HERITAGE PROTECTION

A. State Sovereignty and Cultural Nationalism

The concept of sovereignty is a basic principle underlying international law.⁸² A traditional definition of sovereignty provides: "Sovereignty in the relation between states signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the functions of a state."⁸³ Article 2(1) of the UN

The ICC continues to meet twice a year to follow-up the conservation status of the different archaeological teams and to review new project proposals. *Id.*

79. *Paris Declaration*, *supra* note 5.

80. UNESCO, *Angkor Among the Three Properties*, *supra* note 6.

81. Lemaistre & Cavalier, *supra* note 53, at 118. Concurrent with the Angkor preservation program, UNESCO also initiated community development programs designed to improve literacy levels, develop grass-roots employment programs, and promote AIDS awareness; for further detail on UNESCO's activities in Cambodia, see generally UNESCO, *REPORT ON THE ACTIVITIES*, *supra* note 78.

82. Franz Xavier Perrez, *The Relationship Between "Permanent Sovereignty" and the Obligation not to Cause Transboundary Environmental Damage*, 26 ENVTL. L. 1187, 1188 n.1 (1996) (giving several examples of the recognition of sovereignty as a basic concept of international law).

83. *Arbital Award Rendered in Conformity with the Special Agreement Concluded on January 23, 1925, Between the United States of America and the Netherlands Relating to the Arbitration of Differences Respecting Sovereignty over the Island of Palmas (or Miangas)*, 22 AM. J. INT'L L. 867, 875 (1928).

Charter specifically mentions sovereignty as its basis of existence,⁸⁴ and is described by one scholar:

According to a widely shared view, sovereignty has two complementary and mutually dependent dimensions: within a State, a sovereign power makes law with the assertion that this law is supreme and ultimate, i.e. that its validity does not depend on the will of any another, or 'higher' authority [internal sovereignty]. Externally, a sovereign power obeys no other authority [external sovereignty].⁸⁵

As applied to cultural property, a state's sovereign powers extend over cultural property located within its borders.⁸⁶ "Cultural nationalism," a term coined by Professor John Merryman, echoes this state-centric concept.⁸⁷ Because cultural property is a part of a national cultural heritage,

84. UN Charter art. 2, para. 1 ("The Organization [the UN] is based on the principle of the sovereign equality of all its members."). In addition, the UN Charter also alludes to the primacy of state sovereignty: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter . . ." *Id.* art. 2, para. 7.

85. THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 70 (Bruno Simma ed., 2002) (quoting Bardo Fassbender).

86. Justice Story articulates this concept of territoriality:

The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction and an investment of that sovereignty to the same extent in that power which could impose such restriction.

John A. Perkins, Essay, *The Changing Foundations of International Law: From State Consent to State Responsibility*, 15 B.U. INT'L L.J. 433, 453 (1997) (citing *Schooner Exchange v. M'Faddon*, 11 U.S. 116, 136 (1812)). Territorial sovereignty over cultural property was a concept that arose in the nineteenth century that emphasized nation-states and the relationships of the great powers at the time with each other. Catherine Vernon, *Common Cultural Property: The Search of Rights of Protective Intervention*, 26 CASE W. RES. J. INT'L L. 435, 445 (1994).

87. See John Henry Merryman, *Two Ways of Thinking About Cultural Property*, 80 AM. J. INT'L L. 831, 842–45 (1986). Although later applications of Professor Merryman's work have centered around the repatriation of illegally traded cultural objects, see, e.g., Stephanie O. Forbes, Comment, *Securing the Future of Our Past: Current Efforts to Protect Cultural Property*, 9 TRANSNAT'L L. 235 (1996); Claudia Caruthers, Comment, *International Cultural Property: Another Tragedy of the Commons*, 7 PAC. RIM L. & POL'Y 143 (1998); Anna Sljivic, *Why do You Think it's Yours? An Exposition of the Jurisprudence Underlying the Debate Between Cultural Nationalism and Cultural Internationalism*, 31 GEO. WASH. J. INT'L L. & ECON. 393 (1998), and not the management of cultural property sites per se, his analysis is useful in illuminating the tensions between state sovereignty and the emergence of international law in this area.

sovereignty over these properties should remain with the state.⁸⁸ Supporters of cultural nationalism argue that sovereignty and possession remain with the state for the following reasons: (1) because cultural property is an expression of a civilization that existed or is currently existing within a state, its citizens thus have a stronger claim based on identification and national pride;⁸⁹ (2) retention of sovereignty provides the context of cultural property;⁹⁰ and (3) cultural property usually has utilitarian qualities, including market value, that may be harnessed by the state and its people.⁹¹

It has also been argued that host states have every right to remain wary of international intervention in light of the self-serving actions by past conquerors in imposing their view of what is "ideal" property management.⁹²

88. Merryman, *supra* note 87, at 832.

89. Vernon, *supra* note 86, at 449–52. Vernon, however, cautions that claims of cultural nationalism are sometimes based on a piece of work that is merely physically present on the claimant state, as opposed to its people having exclusive cultural or religious attachment to it; this argument is not applicable in the instance of the Angkor sites as the Khmers have exclusive contribution to its creation. Additionally, Vernon warns that national attachment to cultural property can be used as propaganda for despotic regimes. This was certainly true during the Khmer Rouge government's actions. *See supra* Part II.A. On the other hand, a strong argument supporting state sovereignty is the fact that Cambodians today remain deeply connected to the Angkor sites: its temples today are still places of worship, and the moats and forests both within and surrounding the sites are used by local Cambodians for everyday needs. Gittings, *supra* note 54, at 13.

90. This argument pertains mainly to repatriation of stolen antiquities. Scholars advocating for repatriation contend that a cultural property's significance and educational importance derive from its relationship with its natural environment. It follows that the removal of cultural properties from this meaningful milieu destroys some of its inherent value. Merryman, *supra* note 87, at 843. An extension of this argument to the Angkor sites raises the question addressed in Part IV of the Note: Should Cambodia retain sovereignty over the sites when its management policies, which are criticized as too mass tourism-oriented, de-contextualizes and diminishes the aesthetic value of Angkor?

91. This argument is perceived as morally repugnant to internationalists; since cultural property is considered as priceless and irreplaceable, there is something coercive and unconscionable about allowing the trade of antiquities especially in exchange for subsistence needs. Caruthers, *supra* note 87, at 161.

92. *See, e.g.*, French, *supra* note 10, at 175; Lakshman Guruswamy, Jason C. Roberts & Catina Drywater, *Protecting the Cultural and Natural Heritage: Finding Common Ground*, 34 TULSA L.J. 713, 720–23 (1999) (discussing Native Americans' and Australian Aborigines' distrust towards archaeologists and museums because of the plunder and offensive public display of religious objects and artifacts taken from sacred burial grounds in the name of science and preservation).

B. International Culturalism and World Heritage

The resurgence of cultural internationalism coincides with the erosion of the concept of state sovereignty in the twentieth century.⁹³ Contrasted with cultural nationalism, cultural internationalism views cultural property as belonging to the world's peoples and not limited to the citizens of the state where the property is located.⁹⁴ The concept of world heritage as described by the WHC echoes this sentiment: "[P]arts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole."⁹⁵

Supporters of cultural internationalism, therefore, argue for greater international intervention rights for the protection of world heritage. They reason that because sovereign powers of a state are never absolute,⁹⁶ foreign retention of cultural property may be permitted when state conditions threaten cultural property (e.g., because of political instability, the lack of resources for restoration and protection, or a state's inattention

93. See Louis Henkin, *That "S" Word: Sovereignty, and Globalization, and Human Rights, Et Cetera*, 68 *FORDHAM L. REV.* 1, 3–4 (1999) (discussing how three "transformative developments" in the twentieth century have contributed to the wane of external sovereignty: the advent of two world wars and the development of nuclear technology; states' increasing pursuit of cooperation through specialized agencies, e.g., the UN and the International Monetary Fund; and the rise of the international human rights movement). For another description of the rise and fall of the concept of external sovereignty, see generally Ronald A. Brand, *External Sovereignty and International Law*, 18 *FORDHAM INT'L L.J.* 1685 (1995).

94. Professor Merryman gives the example of the Elgin marbles that were taken from the Parthenon in Greece two hundred years ago by Lord Elgin, the English ambassador to the Ottoman Empire. The Elgin marbles are

part of "the cultural heritage of all mankind." It follows that the people who are not Greek or British have an interest in their preservation, integrity and availability for enjoyment and study. The perennial debate about the propriety of their removal from Greece . . . and the current proposals to return them to Athens become the business of others besides Greeks and Britons. As the smog of Athens eats away the marble fabric of the Parthenon, all of mankind loses something irreplaceable.

Merryman, *supra* note 87, at 837 (internal citations omitted).

95. World Heritage Convention, *supra* note 55, pmb1. The preamble also provides that the "deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world." *Id.*

96. See R.P. ANAND, *CONFRONTATION OR COOPERATION? INTERNATIONAL LAW AND THE DEVELOPING COUNTRIES* 82–83 (1987) (giving an analysis on the incompatibility of unlimited sovereign powers with international law and the trend towards increasing globalization).

and neglect).⁹⁷ As part of the common culture of mankind, cultural property plays an invaluable role in "improving understanding between nations"⁹⁸ and must be made available to a global audience for study and deliberation;⁹⁹ anything less would be a "cultural impoverishment of people in other parts of the world."¹⁰⁰

Cultural internationalists further criticize that a state's indiscriminate retention and prohibition of the trade of cultural objects, when it already has multiple examples of a similar piece and hoards them "beyond any conceivable domestic need," drives the black market in antiquities.¹⁰¹ Looting to feed the international demand of cultural artifacts in turn contributes to the irreplaceable loss of archaeological knowledge.¹⁰²

97. Professor Merryman explains, "To a cultural internationalist, the export of threatened artifacts from [a state] to some safer environment would be clearly preferable to their destruction through neglect if retained." Merryman, *supra* note 87, at 846. Although this argument addresses the issue of repatriation of cultural artifacts to the state of origin, the question of whether the risk of "destructive retention" or "covetous neglect" from a state's actions or inaction is preferable to international intervention may also apply to the state's management of immovable cultural property.

98. P.J. O'KEEFE & L.V. PROTT, LAW AND THE CULTURAL HERITAGE VOL. 1: DISCOVERY AND EXCAVATION 8 (1994).

99. One author points out the confusing nature of this argument since

major museums hoard, and deny access to, multitudes of objects in their basements. They defend this practice on the grounds that the objects are kept there for protection. The "little secret" of archaeology, as it has become known, is the miniscule percentage of excavations that are studied, processed and displayed.

Elazar Barkan, *Amending Historical Injustices: The Restitution of Cultural Property—An Overview*, in CLAIMING THE STONES, NAMING THE BONES: CULTURAL PROPERTY AND THE NEGOTIATION OF NATIONAL AND ETHNIC IDENTITY 31 (Elazar Barkan & Ronald Bush eds., 2002).

100. Merryman, *supra* note 87, at 847. Professor Merryman additionally points out that states ascribe to a view of cultural property partly depending on whether they possess cultural property within their borders. "Source nations," which possess significant amounts of cultural property, also tend to be developing countries and advocate for retentive property rights, strict controls on export and trade, as well as repatriation of cultural objects. Meanwhile, "market nations" believe in cultural internationalism and more relaxed rules in the loan, sale and export of cultural objects. *Id.*

101. *Id.* at 847–50.

102. Looters, intent only on taking portable and marketable pieces from an archaeological site, routinely disregard the historical and cultural information that they destroy. Artifacts are deliberately defaced to hide their true origins, while human remains and other archaeological data are damaged in the pursuit of artifacts to sell. Lisa Borodkin, Note, *The Economics of Antiquities Looting and a Proposed Legal Alternative*, 95 COLUM. L. REV. 377, 382–83 (1995).

C. Treaty and International State Practice: A Mixed Picture

State consent is a prerequisite of international law.¹⁰³ Treaties and other international agreements cannot become binding on a state absent its consent,¹⁰⁴ and international law can be reconciled with state sovereignty when the state as the sovereign willingly waives a portion of its sovereign powers and becomes subject to international law.¹⁰⁵

The Convention is no exception. Despite the name, the Convention officially recognizes the primacy of the state's sovereignty over its cultural properties.¹⁰⁶ It grants great leeway for states that are parties to identify and nominate their own cultural sites for World Heritage designation.¹⁰⁷ Upon inscription, the host state has the primary responsibility of designing and implementing plans for protection and preservation of the cultural site.¹⁰⁸ The Convention is seen as a complement to state sovereignty by providing technical and financial assistance as needed.¹⁰⁹

103. ANAND, *supra* note 96, at 80.

104. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 312(1) (1987).

105. The exception to the general rule that states waive a portion of state sovereignty in order to become subject to international law are those laws that have the character of *jus cogens*, which are recognized by the international community of states as preemptory, or permitting no derogation. *Id.* § 102, cmt. k.

106. Article 6 of the Convention provides:

Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage . . . is situated, and without prejudice to property right provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes world heritage for whose protection it is the duty of the international community as a whole to co-operate.

World Heritage Convention, *supra* note 55, art. 6 (emphasis added). This provision can be interpreted as granting some form of stewardship rights to the host state to protect World Heritage properties situated in its territory for the world's peoples to enjoy.

107. Article 4 of the Convention provides:

Each State Party to this Convention recognizes the duty of ensuring the identification, conservation, presentation and transmission to future generations of the cultural and natural heritage . . . situated on its territory *belongs primarily to that state*. It will do all it can to this end, to the utmost of its resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

Id. art. 4 (emphasis added).

108. Article 5 of the Convention provides:

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavor, in so far as possible, and as appropriate for each country:

Besides the WHC, there is abundant evidence of the customary law of world heritage protection, especially in times of turmoil. Provisions for safeguarding sites and monuments of historic and cultural importance during armed conflict are found in several treaties.¹¹⁰ At least two authors

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- (a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes;
 - (b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions;
 - (c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural and natural heritage;
 - (d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and
 - (e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in the field.

Id. art. 5. According to one commentator, "Once a site is listed as part of the world heritage, its protection becomes the shared responsibility of the international community, which is expected to provide funds as well as technical assistance and professional training to preserve the site." Sarah Cattán, *The Imperiled Past: Appreciating our Cultural Heritage*, UN CHRONICLE, Nov. 4, 2003, at 72.

109. The preamble of the Convention provides:

[I]n view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding value, by the granting of collective assistance, which, although not taking the place of action by the State concerned, will serve as an efficient complement thereto.

World Heritage Convention, *supra* note 55, pmb1.

110. See, e.g., The Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention of 1954), May 14, 1954, 1954 U.S.T. 388, 249 U.N.T.S. 214; Convention (No. IV) Respecting the Laws and Customs of War on Land art. 27, Jan. 26, 1910, 36 Stat. 2277, U.S.T.S. 539; Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments, Apr. 15, 1935, 49 Stat. 3267, 167 L.N.T.S. 290; Protocol Additional (No. 1) to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts art. 53, June 8, 1977; 1125 U.N.T.S. 1, 16 I.L.M. 1391; Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property art. 6, Nov. 14, 1970, 823 U.N.T.S. 231, 10 I.L.M. 289. For a comparative description of

have called for increased rights of intervention by the international community when world heritage is imminently imperiled in this manner.¹¹¹ One reason given for increased intervention is that conservation becomes the least of priorities of a government under attack, but in the long run, safeguarding cultural property facilitates a people's reconstruction of their lives by helping to re-establish their community and national identity.¹¹² Another reason is that armed conflicts can intentionally involve the targeted destruction of cultural property as an attack of a peoples' psyche.¹¹³ Increased rights of intervention during armed conflict are compatible with the underlying principle behind world heritage that cultural properties are unique and finite resources that ought to be protected for all the peoples of the world, not just for the peoples within the state.¹¹⁴ Some scholars also point to changing customary law as perhaps giving the international community a greater right of intervention, akin to international intervention for humanitarian purposes.¹¹⁵

Apart from international treaties, state practice illustrates a mixed reality. On one hand, recent internal and international events reveal that international laws are not always observed by states bound by treaty and serve as a counterargument for those seeking to expand international property rights. Examples include the destruction of many historic buildings and other cultural properties during the breakup of Yugoslavia, despite the state being a signatory to the Convention,¹¹⁶ the destruction of

these treaties, see generally Mark C. Driver, *The Protection of Cultural Property During Wartime*, 9 RECIEL (France) 1 (2000).

111. See, e.g., Karen J. Detling, Note and Comment, *Eternal Silence: The Destruction of Cultural Property in Yugoslavia*, 17 MD. J. INT'L L. & TRADE 41, 74 (1993) (finding support from the Netherlands and Italy's initiative for UNESCO to have more powers to intervene to protect World Heritage properties during armed conflicts); Vernon, *supra* note 86, at 479 (advocating for the expansion of international law of cultural property protection to allow for "internationally approved regime of intervention").

112. Driver, *supra* note 110, at 1.

113. An example is the "cultural genocide" committed by Serbian troops during the internal armed conflict in former Yugoslavia; Sarajevo's many churches, mosques and libraries, dating back to the fourteenth and fifteenth centuries were specifically targeted as a way to intimidate and drive out the Muslim minority. Vernon, *supra* note 86, at 443–44.

114. World Heritage Convention, *supra* note 55, pmbl.

115. Jost Delbruck, *A More Effective International Law or a New "World Law"*—*Some Aspects of the Development of International Law in a Changing International System*, 68 IND. L.J. 705 (1993) (giving examples of emerging customary law emphasizing a greater international role with respect to the prohibition on the use of force, threats to international peace, protection of human rights, and protection of the environment).

116. For a detailed description of the failure of international law to protect cultural property during the Yugoslavian civil war, see generally Detling, *supra* note 111 (focus-

the Bamiyan Buddhas in Afghanistan by the Taliban, despite Afghanistan being a signatory to the Convention,¹¹⁷ the looting of Iraqi museums during the Persian Gulf War,¹¹⁸ and most recently, the opening of a giant discount store by the ancient city of Teotihuacán in Mexico.¹¹⁹ On the other hand, enough examples also point to the observance of international obligation to protect world heritage properties in the face of the opposition by powerful domestic interests. Yellowstone National Park became the first national park to become listed on the World Heritage List, despite intense lobbying by the U.S. mining industry.¹²⁰ Similarly, Australia was successful in having the Queensland rainforest region inscribed against fierce dissent by the State of Queensland government and the timber industry.¹²¹

ing on the 1954 Hague Convention protections for cultural property during armed conflict in Croatia and how its exceptions granted to “military necessity” turned out to be a significant flaw as it may have been exploited by the military in its targeted destruction of cultural properties).

117. Kanchana Wangkeo, *Monumental Challenges: The Lawfulness of Destroying Cultural Heritage During Peacetime*, 28 YALE J. INT'L L. 183, 243–64 (2003) (describing how the Taliban’s destruction of cultural property that dated back to the fifth century in response to the Taliban Supreme Ruler’s decree to destroy statues of “false idols” was met by harsh and immediate response by the international community).

118. The United States especially has been criticized for failing to plan for the protection of Iraqi museums and other cultural properties which scholars predicted would become casualties of the Gulf War. Consequently, looting of priceless relics is reported to have occurred on a massive scale. Vernon, *supra* note 86, at 442; Martin Gottlieb, *Of 2,000 Treasures Stolen in Gulf War of 1991, Only 12 Have Been Recovered*, N.Y. TIMES, May 1, 2003, at A16.

119. James C. McKinley Jr., *World Briefing Americas: Mexico: Wal-Mart Opens Near Pyramids*, N.Y. TIMES, Nov. 6, 2004, at A8. Teotihuacán is an ancient city of which the cultural origins are unknown. It includes pyramids dating back 1,800 years. *Id.* It was inscribed on the World Heritage List in 1987. UNESCO, *World Heritage List: Pre-Hispanic City of Teotihuacán*, <http://whc.unesco.org/en/list/414> (last visited Aug. 31, 2005).

120. See generally Daniel L. Gebert, Note, *Sovereignty Under the World Heritage Convention: A Questionable Basis for Limiting Federal Land Designation Pursuant to International Agreements*, 7 S. CAL. INTERDISC. L.J. 427 (1998) (describing how the Yellowstone National Park was inscribed on the World Heritage List despite fierce opposition by mining interests and the U.S. Congress’ suspicions of the federal government’s motives).

121. See generally Thomas H. Edmonds, Comment, *The Queensland Rainforest and Wetlands Conflict: Australia’s External Affairs Power—Domestic Control and International Conservation*, 20 ENVTL. L. 387 (1990) (describing the exercise of Australia’s federal powers under its constitution’s external affairs power to nominate the 3,500 square miles of Queensland rainforest for inscription onto the World Heritage List, despite the Queensland state’s vehement resistance and opposition from the timber industry).

Professor Merryman acknowledges that both of these perspectives on cultural property have valid points and urges that neither has to be completely abandoned.¹²² These competing values of cultural internationalism and cultural nationalism are next applied in the context of cultural property management in the form of tourism. Especially in a source nation¹²³ like Cambodia, with a population that is generally unskilled and requires education and training to become competitive in the global market, harnessing the market potential of its cultural property through tourism is seen as an attractive and easy source of revenue and employment.¹²⁴ Meanwhile, the international community calls on the Cambodian government to observe its international obligations under the Convention by implementing plans for limiting tourism.

V. THE PROS AND CONS OF SUSTAINABLE TOURISM

As archaeological studies uncover more information about ancient Khmer civilization, the black market for Khmer antiquities has exploded.¹²⁵ Stronger cultural property laws further contribute to the demand.¹²⁶ By the same token, the de-mining of the sites and successful preservation efforts are luring tourists to Angkor in increasing numbers.¹²⁷ The international community is increasingly worried that tourism is adversely affecting the Angkor sites. Conservation experts fear that

122. Merryman, *supra* note 87, at 852–53.

123. For a definition of source nation, see *supra* note 100.

124. Governments look to tourism as part of their development strategies for several reasons. The tourism industry has enjoyed historical growth with the advent of increased travel. Tourists also come from developed countries and provide much-needed infusions of hard currency in the local economy. Furthermore, unlike other exports, countries generally do not place limits on overseas travel by their citizens. Finally, the labor-intensive nature of the tourism industry generates low-skilled jobs geared toward the young, while requiring relatively low economic cost, as when the attractions are naturally present, e.g., wildlife, beach properties, and cultural monuments. Carson L. Jenkins, *Impacts of the Development of International Tourism in the Asian Region*, in *TOURISM AND ECONOMIC DEVELOPMENT IN ASIA AND AUSTRALIA*, *supra* note 8, at 52–54.

125. French, *supra* note 10, at 184. See, e.g., *Angkor's Treasures Disappearing*, SEATTLE TIMES, Nov. 12, 1997, at A12; *Looters Strip Cambodia of its Art*, SUNDAY TIMES (London), Apr. 11, 1999, at 26; John Aglionin Phoum Snay, *Cambodia's Forgotten Temples Fall Prey to Looters: Guards now Patrol Angkor Wat but other Cultural Sites are being Plundered Daily*, GUARDIAN (London), July 31, 2003, at 13.

126. See Caruthers, *supra* note 87, at 166 (describing how the tightening of cultural property laws has the inverse effect of stoking the black market demand of cultural property and perpetuating the cycle of looting).

127. See *supra* notes 48–51 for estimates of the growth of tourism in Cambodia.

tourists are straining certain temples beyond capacity.¹²⁸ Moreover, tourists are disrespectful of visitor temple rules and restrictions and are left free to touch fragile sculptures and climb over precarious ruins.¹²⁹

Aesthetically, the increase in visits has begun to negatively impact the tourist experience; visitors express their dismay at busloads of tourists tending to ruin any sense of exploration and contemplation.¹³⁰ Visitors also report the presence of rampant begging by children that is run by organized groups.¹³¹ Souvenir hawkers, noise, and air pollution further diminish the area's appeal.¹³² Areas outside Angkor likewise are facing pressures of over-development. Nearby villages are growing exponentially and are beginning to strain the natural resources available.¹³³ Meanwhile, corrupt government officials and developers flaunt APSARA regulations and continue to build hotels within protected zones.¹³⁴

Although the Convention acknowledges unchecked tourism as a threat to world heritage,¹³⁵ past international efforts toward the Angkor sites emphasized restoration of cultural properties rather than tourism man-

128. One example of overcapacity is the unregulated visits of tourists; on a busy holiday in 2001, approximately 5,000 tourists, mostly Cambodians, visited the temple of Banteay Srei, which is estimated to have a maximum safe capacity of only 500 visitors a day. Mydans, *On the Verge*, *supra* note 37, at 26.

129. Mia Turner, *Tourism vs. Preservation at Amazing Angkor; Rewards and Risks of Seeing a Wonder*, INT'L HERALD TRIB., Mar. 12, 1999, at 10; Mydans, *On the Verge*, *supra* note 37, at 26.

130. Phyllis Rose, *Anticipating Angkor, A Dream Deferred*, N.Y. TIMES, July 21, 2002, at TR23.

131. Daisann McLane, *Frugal Traveler; Cambodia's City of Temples is a Timeless Survivor*, N.Y. TIMES, Mar. 5, 2000, at T6.

132. See Barré, *supra* note 49, at 129 (discussing the planned introduction of electric shuttle vehicles to make the Angkor sites "quieter and greener"); Michael Sheridan, *Cambodia's Temple Idyll Faces Death by Karaoke*, SUNDAY TIMES (London), July 7, 2002, at 23 (lamenting that "[w]here night used to fall to a murmuring jungle chorus, the strains of numerous karaoke bars now contend in the tropical twilight.").

133. Besides tourism, Cambodians living around Angkor are heavily reliant on farming, fishing and the forest resources and the danger of overexploitation is exacerbated with the rise in the population. Wager, *supra* note 28, at 423.

134. See generally Sheridan, *supra* note 132 (describing how illegal development of hotels, restaurants, bars and other tourist facilities disregard the zoning regulations enacted by APSARA).

135. Tourism's dangers are alluded to in the preamble to the Convention: "[C]ultural heritage . . . [is] increasingly threatened with destruction not only by traditional sources of decay, but also by changing social and economic conditions which aggravate the [destructive] situation with even more formidable phenomena of damage and destruction." World Heritage Convention, *supra* note 55, pmbl.

agement.¹³⁶ With the influx of both residents and tourists following successful preservation efforts, cultural internationalists would like to see Cambodia put the brakes on tourism. In particular, the ICC calls on Cambodia to implement standards of sustainable tourism.¹³⁷

The concept of sustainable tourism has its roots in the idea that cultural heritage is a resource that can be depleted if managed unwisely.¹³⁸ Tourism developments have caused environmental damage around the world in different forms: water pollution, visual pollution, congestion, land-use pollution and ecological disruption.¹³⁹ As applied to the Angkor sites, sustainability is a laudable goal. Small-scale, low-impact “cultural” tourism would best serve the long-term preservation of the sites and natural resources as well as expose tourists to a high-quality and educational cultural experience.¹⁴⁰ Anathema to this is the concept of mass-market tourism where quantity, not quality, is the primary objective.¹⁴¹

APSARA, to its credit, has largely attempted to comply with the UNESCO ideals of tourist development. Ticket sales were outsourced to a private firm and the income generated has helped APSARA meet its expenses.¹⁴² Its recent initiatives included establishing a tourist monitoring station, implementing plans to decrease noise and air pollution at the sites by providing for electric shuttles, and improving local infrastructure

136. Lemaistre & Cavalier, *supra* note 53, at 118–19 (discussing the achievements of the international community over the past ten years in safeguarding the monuments, and the need to shift its current priorities to developing tourism).

137. *Id.* at 122–24.

138. See *supra* note 95 and accompanying text; see also *supra* note 8 for a definition of sustainable tourism.

139. See Jenkins, *supra* note 124, at 59 (furnishing examples of environmental damage caused by over-tourism in different parts of the world, as too-rapid increases of tourist visits overwhelm local infrastructures and resources).

140. See Michael Hitchcock & Victor T. King, *Discourses with the Past: Tourism and Heritage in South-East Asia*, 31 *INDON. & MALAY WORLD* 7, 8 (2003) (describing how the ICC and APSARA plan to encourage the development of high-quality tourism).

141. One critique of unfettered tourism policies is that “[m]ass tourism has often resulted in over-development, uneven development, environmental degradation, and invasion by culturally insensitive and economically disruptive foreigners . . . it is the pattern of industrial growth, exploitation of natural resources and consumerism, in brief, the unsustainable development that characterizes contemporary Western civilization, that are to blame.” Alexander C. O’Neill, *What Globalism Means for Ecotourism: Managing Globalization’s Impacts on Tourism in Developing Countries*, 9 *IND. J. GLOBAL LEGAL STUD.* 501, 507 (2002) (internal citations omitted).

142. Barré, *supra* note 49, at 128. A one-day ticket costs \$20, a three-day ticket costs \$40 and a seven-day ticket costs \$60. *Id.*

and tourist facilities.¹⁴³ It has also continued to collaborate with UNESCO for assistance in the development of its tourist plan.¹⁴⁴ However, to the consternation of APSARA and the international community, the rest of the Cambodian government considers the Angkor sites to be an economic engine in terms of tourist dollars and the creation of jobs.¹⁴⁵ Angkor appears inevitably headed towards commodification as the sites are used for films and commercials;¹⁴⁶ the 2000 filming of a Hollywood movie at Angkor so offended ICC officials that they threatened to have the site de-listed.¹⁴⁷

Despite the low-impact nature of sustainable tourism that is advocated by cultural internationalists,¹⁴⁸ the concept suffers from some difficulties. One critique of sustainable tourism is that even tourism in limited and controlled numbers will eventually lead to mass-market tourism, as small-scale tourism serves as a springboard for mass-market tourism when “discoverers” of exotic and pristine locations spread their experi-

143. *Id.* at 129. Plans for the electric shuttle are on hold following protests by locals dependent on transporting tourists between the sites for their livelihood. Gittings, *supra* note 54, at 13.

144. Barré, *supra* note 49, at 129.

145. See, e.g., Tim Winter, *Angkor Meets Tomb Raider: Setting the Scene*, 8 INT'L J. HERITAGE STUD. 323, 332 (2002) (detailing the Royal Government's inclination towards large-scale tourism to alleviate the country's financial burden and make Cambodia more attractive to international aid groups).

146. Mydans, *On the Verge*, *supra* note 37, at 26.

147. The film, *Tomb Raider*, was the movie version of a popular video game of the same name. It involved action scenes filmed in computer-generated settings incorporating some of the Angkor temples' details. Not only was the depiction of the temples wholly inaccurate (Khmer architecture was juxtaposed with unfamiliar elements such as hidden treasure in underground chambers and Egyptian hieroglyphics), but the Buddhist and Hindu religious influences were shown in a superficial light. Even though filming caused no actual harm to the sites, the portrayal of Angkor Wat and what the film represented may have damaged UNESCO's goals of presenting world heritage sites as fragile sites that require protection; *Tomb Raider* involved gunfights and other scenes of pillage and destruction that sadly, Angkor is not unfamiliar with. Additionally, the filming of a major Hollywood film that “dispenses with any aspirations of high cultural refinement” is at odds with the plan to develop “high quality, cultural tourism.” Winter, *supra* note 145, at 328–36. As part of its expert and advisory mission, UNESCO is now working with APSARA in developing legislation regarding the intellectual property rights of Angkor images. Barré, *supra* note 49, at 129.

148. International experts envision cultural property as having a finite lifespan; unwise policies that contribute to the degradation of local resources, and straining the carrying capacities of both the cultural property at issue and the surrounding environment by over-tourism accelerate the consumption of the properties as well as diminish its attraction to later visitors. Xu Honggang, *Managing Side Effects of Cultural Tourism Development—The Case of Zhouzhuang*, 43 SYS. ANALYSIS MODELLING SIMULATION 175, 187 (2003).

ences to other tourists who later come in increasing numbers.¹⁴⁹ Second, the “high quality” tourism promoted in Angkor is suspiciously similar to luxury tourism,¹⁵⁰ which has less impact on the monuments themselves, but may have greater impacts in other ways. Economic leakage can still be quite high because of the need to import goods to satisfy the luxury market.¹⁵¹ Another description of the dangers of luxury tourism is given:

[L]uxury tourism tends to require more imports, to be more capital-intensive, to be more dependent on outside control of capital, to encourage more of a sense of conspicuous consumption, and to result in a greater sense of relative deprivation [by locals] than more modest facilities. Moreover the infrastructure for such tourists rarely is used by other than the elite of a given destination . . .¹⁵²

Developers, which are primarily multinational entities, also have less incentive to retain capital in the local economy if downturns develop, for instance the recent effects of 9/11 on global tourism.¹⁵³ One report estimates that as much as half of tourism revenues of developing countries

149. Griffin & Boele, *supra* note 8, at 327–28.

150. This is reflected in the priorities of improving tourist infrastructure such as “tourist-quality” hotel rooms, the construction of sports and leisure facilities, developing electric shuttle services, increasing Siem Reap’s airport capacity, the addition of tourist-friendly facilities such as signs and directions, and the removal of “unsightly” activities such as begging and hawking of tourist souvenirs. *See* Barré, *supra* note 49, at 127. The theory behind “high quality” sustainable tourism is that “more affluent tourists are better for a destination, because they bring in more cash relative to the intrusiveness of their presence.” LINDA K. RICHTER, *THE POLITICS OF TOURISM IN ASIA* 183 (1989).

151. Economic leakage occurs when:

much of the income generated by the tourist industry “leaks” out of the local community or host country and into the hands of foreign interests or never reaches the host country to begin with. Leakage is most pronounced in developing countries and . . . occurs when there are high levels of outside ownership of plant and services; through the sale of inclusive tours, whereby a package that includes transport, accommodation, food and recreational activities is bought outside the destination from a (foreign) operator . . . and where imports (of food, equipment and machinery) are required to meet tourist demands, thus negating at least part of the balance of payments advantages provided.

Alexander O’Neill, Note, *What Globalization Means for Ecotourism: Managing Globalization’s Impacts on Ecotourism In Developing Countries*, 9 *IND. J. GLOBAL LEGAL STUD.* 501, 508 (2002). The risk of economic leakage with high-quality tourism appears great in Angkor’s case as multinational corporations compete to erect hotel complexes, and flights to Cambodia are routinely sold as part of package trips. *See* Gray, *Tourist Development*, *supra* note 52, at C6; McLane, *supra* note 131, at T6.

152. RICHTER, *supra* note 150, at 183.

153. Jenkins, *supra* note 124, at 56; *see, e.g.*, CIA, *supra* note 39 (describing the devastating effect of the events of 9/11 to the tourism industry in Cambodia).

shift back to developers and business owners who are mostly from developed countries.¹⁵⁴

There is also the question of who decides whether a particular policy is appropriate, given that in developing countries the local community is in a weak bargaining position relative to the policymakers.¹⁵⁵ Another critique of "high quality" sustainable tourism is that it is viewed in some circles as an imposition of neocolonialism, i.e., the values reflect middle-to upper-class, and predominantly European ideals while disregarding the realities of most developing countries.¹⁵⁶ For instance, "[t]he luxury hotel in the developing nation requires excessive monetary support, disproportionate water, energy, food, land and construction materials—all items in short supply."¹⁵⁷ Clearing up the "messy but likeable tourist mix"¹⁵⁸ at Angkor not only will potentially deprive many of a viable source of income, but may also risk infringing locals' rights to use the site.¹⁵⁹

Yet another risk of overly restrictive tourism policies is related to ideals of sovereignty over cultural objects and cultural nationalism. Cultural nationalists champion the local control over cultural property as the property's true significance lies not with its history, but rather how it is perceived and utilized in the present.¹⁶⁰ Phrased another way:

[H]eritage is tradition repackaged as spectacle. The refurbished buildings at tourist sites may look splendid, and the refurbishment may even be authentic down to the last detail. But the heritage that is thereby pro-

154. Christine Guaditis, *Tourism in Developing Countries—Panacea or Poison?*, 9 U. MIAMI INT'L & COMP. L. REV. 265, 281 (2001).

155. See RICHTER, *supra* note 150, at 184–85 (1989) (criticizing the priorities of policymakers in developing countries in neglecting the budget traveler market while catering to elite tastes and political objectives of the ruling elite).

156. *Id.*

157. *Id.* at 185.

158. Gittings, *supra* note 54, at 13.

159. The heritage police, who are in charge of the security of the Angkor sites, are criticized for preventing locals from cultivating the park's resin trees or grazing water buffalo around the moats and grounds of the temples. Limiting visitors may also interfere with Cambodians' religious practices, as the temples remain to this day places of worship for Buddhists. See *id.* Buddhism to this day remains the major religion in Cambodia, practiced by 95 percent of the population. CIA, *supra* note 39.

160. See *supra* note 89 and accompanying text. "Museumization" of a culture is troubling because it implies that the culture is permanent and unchanging, when in fact culture is fluid and dynamic. See RICHTER, *supra* note 150, at 188. As applied to the tourist strategies at Angkor, focusing only on the historical importance of the monuments and ignoring Angkor's real meaning to modern-day Cambodians provides a sterilized tourist experience.

tected is severed from the lifeblood of tradition, which is its connection with the experience of everyday life.¹⁶¹

Moreover, packaging the Angkor sites as a wholly historic experience is likely futile since

[v]ibrant cultures are unlikely to be static but may evolve in response to internal and external stimuli. Not only may attempts to ‘freeze’ culture be doomed to failure in face of global forces of change, such approaches would frustrate the legitimate desires of resident populations to seek improvements in their well-being.¹⁶²

But perhaps the most compelling argument against “high quality” sustainable tourism is the dire economic situation within Cambodia.¹⁶³ Traditional value systems remain distorted because of extreme poverty; looters prey on unguarded carvings that were once considered too holy to touch.¹⁶⁴ Sex tourism, which has been the bane of tourist policies elsewhere in Asia,¹⁶⁵ has already gained more than a toehold in Cambodia.¹⁶⁶ Poverty is cited as the primary reason why many families are willing to

161. Sarah Harding, *Cultural Property and the Limitations of Preservation*, 25 LAW & POL’Y 17, 26 (2003).

162. Geoffrey Wall, *Conclusion: Southeast Asian Tourism Connections—Status, Challenges and Opportunities*, in INTERCONNECTED WORLDS: TOURISM IN SOUTHEAST ASIA 320 (Peggy Teo et al. eds., 2001). See also Jose-Roberto Perez-Salom, *Sustainable Tourism: Emerging Global and Regional Regulation*, 13 GEO. INT’L ENV’T L. REV. 801, 806 (2001) (“[T]ourism development may impair the rights of local people when they are excluded from areas strictly devoted to tourism.”); Graeme Evans, *Living in a World Heritage City: Stakeholders in the Dialectic of the Universal and Particular*, 8 INT’L J. HERITAGE STUD. 117, 133 (2002) (providing examples of negative impacts of tourism to residents of Quebec, a designated World Heritage City).

163. See *supra* Part II.B.

164. See French, *supra* note 10, at 180; Clément, *supra* note 36, at 140. To its credit, APSARA has successfully reduced the plunder from the Angkor sites, but undiscovered and unguarded temples and archaeological sites continue to be looted. Snay, *supra* note 125, at 13.

165. See RICHTER, *supra* note 150, at 200 (detailing how “sunlust” tourism and the sex trade in several Asian countries has negative effects both in terms of its international reputation and domestic problems of disease, crime and child abuse).

166. See Kathy Marks, *British Sex Tourists Turn Killing Fields of Cambodia into Paedophiles’ Playground*, INDEP. SUNDAY (London), Jan. 5, 2003, at 15. HIV and AIDS are major health problems in Cambodia, affecting 2.6 percent of all adults. Population estimates given by the CIA Factbook for 2003 were also revised due to the “excess mortality” from this disease. CIA, *supra* note 39.

sell their young children to the sex trade.¹⁶⁷ Even the pervasive corruption that is a fact of life for Cambodians can be traced to poverty.¹⁶⁸

VI. PRESCRIPTION: CULTURAL NATIONALISM AND THE GREATER INVOLVEMENT OF THE LOCAL COMMUNITY

The rich countries may look upon development as the cause of environmental destruction, but to us [developing countries], it is one of the primary means of improving the environment of living, of providing food, water, sanitation and shelter, of making the deserts green and the mountains habitable. . . . [The] [e]nvironment cannot be improved in conditions of poverty. Nor can poverty be eradicated without the use of science and technology.¹⁶⁹

The requirements of "high quality" cultural tourism to the Angkor management plan are an external imposition by the international community.¹⁷⁰ This is understandable given the failed tourism policies of other countries that resulted in environmental degradation and diminished allure to international visitors.¹⁷¹ However, because of the difficulties of sustainable tourism discussed in Part V, this Note advocates that the international community should have a more deferential approach to a state's tourism management policies, i.e., that greater weight be afforded to cultural nationalism in developing countries like Cambodia.

First, the principles of internal sovereignty dictate that the Cambodian government's priorities should lie with its people, despite its obligations under the Convention.¹⁷² The government expects tourism to serve as an

167. See Marks, *supra* note 166.

168. See, e.g., French, *supra* note 10, at 184–85 (mentioning how most temple guards of Cambodia are so poorly paid that they take bribes to supplement their income); *Looters Strip Cambodia of its Art*, *supra* note 125 (describing how Cambodian soldiers themselves work alongside looters in decimating unguarded temples and transporting artifacts outside of Cambodia).

169. ANAND, *supra* note 96, at 159–60 (citing India's Prime Minister, Indira Gandhi, in a speech given to the UN Conference on Human Environment in Stockholm on June 14, 1972).

170. See Winter, *supra* note 145, at 332 (naming the WTO and UNESCO as the primary forces behind the push for cultural tourism, as opposed to mass tourism, for the Angkor sites).

171. See *supra* notes 130–34.

172. The notion of internal sovereignty is such that individuals consent to the governance of the sovereign state when the state purports to act on behalf of the people's welfare. As Brand explains:

In order to escape from the resulting "miserable condition of war," a sovereign is established through our mutual covenant; and we confer upon the sovereign

important revenue source, in an environment where human and economic capital has yet to fully recover from the losses suffered from internal strife and economic isolation for most of the last century. This Note proposes that the government's prerogatives in addressing domestic concerns, so long as consented to by its subjects, be given great weight by the international community. Assent by Cambodians is evidenced here by public approval of the government's initiatives of developing Angkor as a mass-tourist destination.¹⁷³ International publicity of the Angkor sites, through filming and commercials, also obtained popular support as locals not only welcomed the added source of income, but also the opportunity to present Cambodia to the world as moving beyond the horrors of the Khmer Rouge.¹⁷⁴ Harnessing tourism in this capacity, to promote the welfare of its citizens, comports with the expectation that the sovereign act in the best interests of the party from whom it obtains its authority from—its citizens.

The second reason in favor of emphasizing cultural nationalism in the management of world heritage sites is that the Convention explicitly respects the sovereignty of the state over properties within its borders.¹⁷⁵ Even though the Convention appears to espouse an internationalist perspective in defining what properties constitute world heritage and how their protection becomes the collective responsibility of the states parties,¹⁷⁶ this is insufficient to justify the dictation of international ideals. Treaty interpretation similarly contains a presumption favoring state sovereignty.¹⁷⁷

Critics contend that interpreting the Convention to give greater deference to values of cultural nationalism essentially reduces it to a treaty "without teeth" and renders it ineffective in carrying out its objectives.¹⁷⁸

"all our power and strength," and "submit [our] wills, every one to his will, and [our] judgments, to his judgments," so that "he may use the strength and means of [us] all as he shall think expedient, for [our] peace and common defense."

Brand, *supra* note 93, at 1687 (quoting THOMAS HOBBS, *LEVIATHAN* XIII 3–4 (E. Curley ed., 1994)). See also ANAND, *supra* note 96, at 75.

173. See Winter, *supra* note 145, at 331.

174. *Id.* at 331.

175. See *supra* Part III, IV.C for the relevant provisions of the treaty concerning the retention of state sovereignty over world heritage properties within its territories.

176. See *supra* note 105.

177. See ANAND, *supra* note 96, at 81–82 for examples of how treaty interpretation principles provide that between two possible interpretations, the presumption is always that of the lesser infringement on state authority.

178. Vernon especially contends that increased intervention rights are necessary, as leaving the impetus to protect World Heritage properties solely on the host state ensures that domestic interests will continue to take priority over cultural preservation:

This is perhaps too harsh of a view as the Convention is intended to serve as a complement to state action.¹⁷⁹ States decide which properties it wants to designate for inscription and following that, how they intend to promote the sites' protection and conservation.¹⁸⁰ The WHC thus needs to promote, and not contest, APSARA's authority over the Angkor sites.

Third, international law in this area has not ripened to the point that the protection of cultural property is prioritized ahead of domestic concerns in *all* situations. One author's analysis is that state practice and *opinio juris* indicate that the destruction of cultural property is preferable, or at least acceptable, in certain situations when there is a clear economic benefit that will extend to the greatest number of people and the least harmful measures are taken.¹⁸¹ Another exception to the general rule of

The assistance provisions need to be expanded to include the right for any State, not just the one where the cultural heritage is situated, to invoke the help and finding of [the World Heritage] Committee. The assistance guaranteed by the committee under the [Convention] cannot be truly protective of common property rights without such recognized intervention provisions.

Vernon, *supra* note 86, at 469–71. Cf. Michael J. Kelly, *Conflicting Trends in the Flourishing International Trade of Art and Antiquities: Restitutio in Integrum and Possession Animo Ferundi/Lucrandi*, 14 DICK. J. INT'L L. 31, 44 (1995) (describing how the 1970 UNESCO Convention, which has a provision identical to the World Heritage Convention's provision that specifically allows states that are parties to define "cultural property" within their territories that is deserving of protection, remains weak and unenforceable because of the great deference given to the state).

179. Article 7 of the Convention provides:

For the purpose of this convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage.

World Heritage Convention, *supra* note 55, art. 7 (emphasis added).

180. See *supra* note 74.

181. As an example, Wangkeo points to Egypt's construction of the Aswan High Dam in the 1950s. The Aswan Dam was expected to provide a major boost to local agriculture by ensuring a more stable water supply—instead of the traditional reliance on the annual flooding of the Nile River—for the irrigation of crops. Construction of the dam meant that countless monuments and artifacts would be lost, including the temples of Abu Simbel and Philae Island, both of which were unique and irreplaceable. Besides this great loss of cultural property, tens of thousands of Nubians also risked displacement. Egypt appealed to the international community to explore and excavate artifacts in the water's path, and bestowed in its gratitude temples and other artifacts to states that helped. There was no real outcry over the destruction of temples and artifacts as the international community perceived the economic necessity for the Aswan High Dam as genuine, and that Egypt undertook great efforts to save as much of the cultural property as it possibly could. Wangkeo, *supra* note 117, at 202–15.

the preservation of cultural property is granted for military necessity.¹⁸² On the other hand, intentional destruction of cultural property is almost universally rejected when it is undertaken because of iconoclasm¹⁸³ or as a way to subjugate a people.¹⁸⁴ For Cambodians, the harsh reality is that poverty makes high quality cultural tourism a luxury they likely cannot afford.¹⁸⁵ As one critic notes, “privileging cultural heritage over progress and prosperity is feasible only after a minimum level of affluence has been achieved.”¹⁸⁶ Thus, until the standard of living of Cambodians as a whole reaches this threshold, strong moral imperatives exist to prioritize human needs over cultural protection.

Although it may seem counterintuitive, cultural nationalism applied in Cambodia’s case actually dovetails with a different aspect of international law, which is the respect for human rights. The Angkor sites embody not only a shared cultural identity of a defined group,¹⁸⁷ but are also part of the religious identity of the Cambodian people.¹⁸⁸ As such, collective ownership of the sites exists among Cambodians, and these rights bestow on them a voice in its management. Human rights agreements provide for the protection of these cultural and religious rights.¹⁸⁹ Moreover, international law supporting human rights remains more established than cultural internationalism,¹⁹⁰ and provides support for the

182. See Detling, *supra* note 111, at 73.

183. See Wangkeo, *supra* note 117 and accompanying text.

184. See, e.g., Detling, *supra* note 111, at 74–75 (calling on increased intervention rights for cultural properties endangered in internal armed conflicts when parties intentionally damage these properties to psychologically affect their adversaries). See also Wangkeo, *supra* note 117, at 215–20 (describing the international outcry following the destruction of Bucharest and many other Romanian villages to implement Marxist policies. States saw through the “systemization” land reform policies of the Ceausescu government, and decried the real political motive behind the government’s actions: to punish those who resisted Communism in Romania).

185. See *supra* Part II.B.

186. Barkan, *supra* note 99, at 36–37.

187. The Khmers, the culture that gave rise to the Angkor sites, make up 90 percent of the current Cambodian population. CIA, *supra* note 39.

188. Buddhism was one of the religious influences of the classic Khmer period and to this day remains the predominant religion of the Cambodian people, claiming 95 percent of the population as practitioners. *Id.*

189. See, e.g., *Universal Declaration of Human Rights*, G.A. Res 217A, U.N. GAOR, 3d Sess., pt. 1, Resolutions, at 71, U.N. Doc. A/810 (1948) (providing protections for religious practices and beliefs as well as for cultural expression).

190. See, e.g., Delbruck, *supra* note 115, at 713–14 (documenting several shifts in international law, including the growing acceptance of fundamental human rights, following the Cold War).

proposition that states, and not the international community, retain sovereignty over religious cultural properties.

Finding that cultural nationalism prevails over cultural internationalism does not necessarily imply the erosion of the concept of world heritage. The ideals of world heritage and the need to protect them are real indeed. In this way, the WHC's achievements cannot be overstated. The WHC has and continues to provide financial and technical support for world heritage protection to states that otherwise do not have the means nor the wherewithal to do so.¹⁹¹ Besides direct support, WHC provides needed publicity to sites that otherwise would be neglected.¹⁹² The WHC, in its capacity, should continue in its position to provide assistance instead of levying unrealistic expectations of preservation that may work at the expense of local communities.

The WHC needs to design a better framework to guide international intervention for world heritage protection, which recognizes the legitimate claims of the international community while keeping in mind that indigenous peoples have the first claim to their cultural heritage.¹⁹³ It is unfounded at best, and patronizing at worst, to say that the indigenous people's superior claim jeopardizes world heritage ideology, as these peoples are more interested in preservation rather than ownership.¹⁹⁴ However, protectionism must be allowed to give way when real domestic necessity requires some sacrifice of cultural property.¹⁹⁵

191. See *supra* notes 59–60.

192. Kunich aptly describes this particular effect of World Heritage Site designation:

An international legal instrument such as the [World Heritage Convention], buttressed by numerous signatories the world over, has the elusive if not unique capability to confer upon [natural and cultural properties] the imprimatur of official recognition as a World Heritage resource in danger. Indeed, this is one of the chief virtues of international law—the capacity to apotheosize a previously obscure cause, transforming it into a *cause celebre*. It is this aura of official status and legitimacy, coupled with ready access to news media, that vests the [Convention] with the power to transform the collective will of the people, more so than most books, articles, speeches, paid advertisements, or television programs.

John Charles Kunich, *World Heritage Danger in the Hotspots*, 78 IND. L.J. 619, 648 (2003).

193. See Guruswamy, Roberts & Drywater, *supra* note 92, at 741 (advocating for treating indigenous peoples, who are the owners of cultural properties, as stewards of the international community).

194. *Id.*

195. One proposal is given by Wangkeo: “In all situations, parties should incorporate three principles into their decision making [on the destruction of cultural property during peacetime]: (1) there should be a presumption against destroying relics; (2) actors should

Another criticism of upholding the state's sovereignty over cultural sites is that this may lead to the perception that governments acquire the benefits of inscription, but on the other hand also grant a free license for exploitation of the sites. This does not necessarily follow as long as the local community retains a voice in the management plans of cultural property.

To wit, proponents of sovereign control over cultural sites call for more local involvement in the shaping of tourism policies beyond just being a cheap source of labor for the industry.¹⁹⁶ Cambodians, because of their involvement with the Angkor sites at many levels—culturally, spiritually and financially—understand that they need to have sound management policies in place and should be trusted to make wise choices in Angkor's tourist policies.¹⁹⁷ One example is the encouragement of locals' participation in the Nepal park system's development, where input from the community is used in "resource decisions, recoupment and local distribution of revenues from tourism, and linkages between preservation and sustainable community development opportunities."¹⁹⁸

APSARA's priorities in the employment of locals both for short-term, low-skilled projects, as well as for medium-range positions involving stable jobs in public works, reforestation and tourist services¹⁹⁹ are the correct approach in involving the community. Long-term projects should focus on empowering the Cambodians to take over preservation efforts after the inevitable withdrawal of the ICC.²⁰⁰ "High quality" standards

only focus on properties of worldwide significance; and (3) *the needs of living people should always come first.*" Wangkeo, *supra* note 117, at 273–74 (emphasis added).

196. Richter offers this prescription for responsible tourism policies:

[H]osts and guest populations need to not only be considered in the planning for their successful co-existence, they must come to positively value each other if tourism is to be a stable and long-term component of the economy. . . . Too often only the tourist is considered and then only in terms of comforts most already enjoy in abundance at home. The local population is seen only narrowly as a source of labor supply.

RICHTER, *supra* note 150, at 181.

197. See Brian Goodall & Mike Stabler, *Sustainable Tourism and the Community*, in TOURISM AND SUSTAINABLE COMMUNITY DEVELOPMENT 79 (Derek Hall & Greg Richards eds., 2000) (suggesting that the potential exists for community-based approaches to reduce tourism's impact on the natural, social and cultural environment).

198. Robert Keiter, *Preserving Nepal's National Parks: Law and Conservation in the Developing World*, 22 ECOLOGY L.Q. 591, 655 (1995).

199. See H.E. Van Molyvann, *Management of the Angkor Site: National Emblem and World Heritage Site*, 54 MUSEUM INT'L 110, 115 (2002).

200. One example of this is the training of handpicked locals for restoration work by the archaeological team from Sophia University in Japan. After on-site training work,

should apply not only to tourists, but to the diversity of opportunities available to Cambodians as well.²⁰¹

APSARA must not abandon its role as a regulatory agency²⁰² and as a liaison between the Cambodians and the international community.²⁰³ The interdisciplinary approach to tourism is a wise policy as it attempts to include local concerns as much as possible.²⁰⁴ Community education on the principles of sustainability is essential for Cambodians in making smart choices for Angkor's future.²⁰⁵

VII. CONCLUSION

A decade of successful preservation efforts of the Angkor sites by Cambodia and the international community has yielded a dilemma between competing tourist policies. Seeking to continue protection of the sites, the international community expects Cambodia to adopt high-quality, sustainable tourism. Meanwhile, domestic pressures exist for the government to encourage mass tourism. In light of extenuating economic conditions, the government's responsibilities to its people should remain paramount over protectionist ideals and the community's voice should not be disregarded in the international community's quest to protect world heritage.

*Maria Aurora Fe Candelaria**

some of the students earned scholarships and pursued graduate courses in Japan. Upon their return they are given directorship positions in site management. Yoshiaki Ishizawa, *Human Resources and Cultural Development: A Case Study of the Angkor Monuments*, 54 MUSEUM INT'L 50, 53 (2002).

201. See RICHTER, *supra* note 150, at 191–92 for a poignant account by Cecil Rajendra illustrating how community dissatisfaction and resentment proliferate when poorly planned tourism policies relegate locals to low-paying service jobs with no room for advancement.

202. Jenkins, *supra* note 124, at 63.

203. Barré, *supra* note 49, at 129.

204. Lemaistre & Cavalier, *supra* note 53, at 123.

205. *Id.*

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